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FISCAL IMPACT STATEMENT

LS 6152

BILL NUMBER: HB 1287

NOTE PREPARED: Feb 23, 2009

BILL AMENDED: Feb 23, 2009

SUBJECT: Various Probate and Trust Issues.

FIRST AUTHOR: Rep. Van Haaften

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) *Funeral and Cemetery Matters:* The bill provides that a person who knowingly or intentionally uses or disburses funds in certain trust or escrow accounts for purposes other than the accounts' lawful purposes commits a Class C felony. It provides that the violation, a similar violation involving cemetery perpetual care funds, and violations of similar provisions in the funeral trust laws constitute racketeering activity. It also provides that property involved with the violations may be seized under the civil forfeiture law.

The bill specifies that the statute of limitations period for the criminal offenses of misusing funeral trust or preneed escrow accounts is five years after the date of the death of the settlor or purchaser. It specifies that the statute of limitations period for the criminal offense of misusing a cemetery perpetual care fund is five years after the earlier of: (1) the date the state discovers evidence of the offense; or (2) the date the state could have discovered evidence of the offense through due diligence.

Damages Paid to Plaintiffs Estate: The bill specifies that damages paid to a plaintiff's estate in a personal injury case maintained by the personal representative of a plaintiff who dies from causes other than the personal injury are subject to the statutes governing the Inheritance Tax, the Indiana Estate Tax, and the Generation Skipping Transfer Tax. It requires a person paying the damages to notify the Department of State Revenue of the payment within ten days. It also requires the Department to notify the county assessor of the county in which the plaintiff was domiciled at the time of the plaintiff's death.

Transfer on Death Transfers: The bill provides the method for determining the amount a joint owner or beneficiary of a protected person's multiple party account is entitled to receive from the protected person's estate when a guardian has used assets of the multiple party account. It authorizes individuals to designate

beneficiaries to receive certain forms of property, including real property, upon the death of the individual. It also specifies that the new statute does not apply to the transfer on death (TOD) transfer of TOD securities registered before July 1, 2009, or pay on death (POD) accounts established before July 1, 2009, which remain subject to current law.

Funeral Planning: The bill establishes a statutory form for a funeral planning declaration that allows a person to provide instructions concerning the person's funeral arrangements. It provides that the declaration may be used to designate an individual who will make arrangements after the person's death. It also provides that a person designated in a funeral planning declaration is first in the priority and that a person designated in a health care power of attorney is second in the priority of individuals who can authorize the cremation of another person's remains and who may authorize the owner of a cemetery to inter, entomb, or inurn the body or cremated remains of a deceased human. The bill specifies that a person acting as the attorney in fact under a health care power of attorney has the power to execute a funeral planning declaration on behalf of the principal. It provides that a person who relies in good faith on a funeral planning declaration is immune from liability to the same extent as if the person had dealt directly with the declarant and the declarant had been a competent and living person.

Other Probate Provisions: The bill specifies the methods of satisfying the survivors' allowance. The bill provides separate procedures for the petitioned removal of a corporate personal representative following a change in the control of the corporate personal representative. The bill changes the mailing requirements for opening an estate or guardianship from certified mail to first class postage prepaid mail. It also provides the method for determining the amount a joint owner or beneficiary of a protected person's multiple party account is entitled to receive from the protected person's estate when a guardian has used assets of the multiple party account. The bill makes numerous changes and additions to the power of attorney statutes. It also specifies mailing address requirements for recording conveyances.

The bill makes a technical correction. (The introduced version of this bill was prepared by the Probate Code Study Commission.)

Effective Date: Upon passage; July 1, 2009.

Explanation of State Expenditures: *Offenses Relating to Funeral Trusts & Cemetery Funds:* The bill establishes a Class C felony and makes several offenses racketeering activities, which is a Class C felony.

(1) The bill establishes a Class C felony for a person who knowingly or intentionally uses or disburses funds in a trust or escrow account for prepaid funeral or burial services for purposes other than those allowed under statute.

(2) The bill adds the offense described in (1) above and other offenses in current statute relating to knowing or intentional misuse of funeral trust funds and cemetery perpetual care funds to the list of crimes that constitute racketeering activity and which may lead to a conviction for corrupt business influence, a Class C felony.

A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was

\$69,223. The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years.

Property Seizures: The bill would add to the type of property that may be seized: (1) property used or intended to be used to commit, facilitate, or promote the knowing or intentional misuse of funds in a funeral trust, a trust or escrow account for prepaid funeral or burial services, or a cemetery perpetual care fund; or (2) property constituting, derived from, or traceable to the gross proceeds that a person obtains directly or indirectly from knowing or intentional misuse of funds in a funeral trust, a trust or escrow account for prepaid funeral or burial services, or a cemetery perpetual care fund. To the extent that the court would notify the Bureau of Motor Vehicles (BMV) and the BMV produces a clear title for a seized vehicle, costs for the BMV could increase minimally.

Explanation of State Revenues: *Offenses Relating to Funeral Trusts & Cemetery Funds:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Property Seizures: The proceeds from the sale of seized property are distributed first to the county sheriff to cover sale costs; then to any person holding a valid lien or having an interest in the property; and then to the Common School Fund as ordered by the court.

Damages Paid to Plaintiff's Estate: The bill requires a person paying a damage award to a resident decedent's estate to give notice of the payment to the Department of State Revenue. The notification must be made within 10 days after the damage award is paid to the resident decedent's estate. The reporting mechanism may result in collection of Inheritance Tax or Generation Skipping Tax that would otherwise not be collected on damage awards paid to estates. The extent of any revenue gain from the reporting requirement is unknown and could be minimal.

Explanation of Local Expenditures: *Offenses Relating to Funeral Trusts & Cemetery Funds:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Property Seizures: The prosecuting attorney for the county in which the seizure occurred may cause an action for reimbursement of law enforcement costs and forfeiture to be brought by filing a complaint in the circuit, superior, or county court of the jurisdiction and may retain an attorney to bring the action who is not a deputy prosecuting attorney.

Notification Requirements: The bill changes the requirement for mail notification when the probate court issues notice of: (1) the administration by the court of an estate; or (2) the filing of a petition for appointment of a guardian or for the issuance of a protective order, and the hearing on the petition. Under current statute, pertinent parties must be notified by certified mail, but the bill changes this requirement to first class postage

prepaid mail. This change will result in an indeterminable reduction in expenses relating to these mail notifications.

Explanation of Local Revenues: *Offenses Relating to Funeral Trusts & Cemetery Funds:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Property Seizures: A county sheriff may retain proceeds from the sale of a seized property to offset costs associated with its sale.

Reporting of Damage Awards: See discussion under Explanation of State Revenues.

Transfer on Death Transfers: The bill could potentially result in additional recording fees to county recorders. However, the extent of this impact is indeterminable. The bill would require the grantor to have the transfer on death deed recorded by the county recorder in the county where the real property interest to be transferred is located. The beneficiary of the real property interest must file an affidavit with the county recorder where the real property is located. The affidavit must contain a legal description of the property, a certified copy of the transferor's death certificate, information on beneficiaries, and a cross-reference to the recorded transfer on death deed.

State Agencies Affected: Department of Correction; Bureau of Motor Vehicles; Department of State Revenue.

Local Agencies Affected: Probate courts; trial courts; local law enforcement agencies; county recorders.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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